where the confinement of the animals beyond the statutory period is admitted and the cause for the confinement has been stipulated, a jury waived, and the case submitted to the Court on an agreed statement of fact.

The Court was called upon to determine, and did determine, whether or not the confinement of the cattle was "*knowing and wilful*" within the intendment of the statute. The Court found that there was no knowledge or wilfulness and that the Railroad Company "attempted, in good faith, to comply with the statutory requirement to unload the cattle within the statutory period". (R. 22).

The question of law presented is, therefore, not as recited by the petitioner in its brief, whether in an action for a penalty under the Cruelty to Animals Act the carrier can escape the penalty by showing that its default was due to the negligent oversight of one of its employees, but the question is whether, in such a suit, the United States can recover the penalty prescribed for the "knowing and wilful" violation of that statute, without some showing that the action of the Railroad Company in confining the animals beyond the statutory period was "knowing and wilful".

Furthermore, in this case there is a preliminary question to be examined. A jury having been waived the case was submitted to the Court for determination on an agreed statement of fact which did not require a verdict either way. The ultimate fact necessary to liability under the terms of the statute, whether or not the confinement of the animals in the car more than thirty-six hours was the result of an act knowingly and wilfully done by the

Railroad Company, was left to the determination of the Court.

The pertinent facts which appear in the stipulation of facts and waiver of trial by jury, which was filed in the District Court, and on which the case was submitted (R. 11), are that the car was loaded with cattle at Hermanville, Mississippi, at 3 P. M. on October 8, 1932, and shipped to New Orleans, Louisiana, with a thirty-six hour release signed by the shipper (R. 12); that this car arrived at Stuyvesant Stock Yards at 11:35 P. M. on October 9, 1932, with two other cars of cattle (R. 13); that the night general yard master received advance information from the Railroad Company's dispatcher at McComb of the approximate time of arrival of these three cars and when the period of confinement for the cattle would expire; that because of the necessity of prompt handling of the cattle and the improbability of handling it within the statutory period on a regular train, the night general yard master procured an extra engine which was in waiting for the arrival of the cars of cattle; that these cars were immediately switched and placed in the Crescent City Stock Yards for delivery at 2:50 A. M. on October 10, 1932, at which time the period allowed for the confinement of the cattle had not elapsed, and the car containing the cattle was placed for unloading within said period of time (R. 13-14); but the night general yard master, whose duty it was to do so, failed to notify the employee of the Illinois Central Railroad, whose duty it was to unload the car, that the cattle car was to be placed for delivery in the early hours of the morning, and because of this failure, the car was not unloaded until 4 A. M. on the morning of Octo-

ber 10, 1932, resulting in confinement of the cattle for thirty-seven hours.

This agreed statement of fact contains all the facts necessary to the determination of the case, except the ultimate fact whether or not the confinement of the cattle in the car was "knowing and wilful", and this ultimate fact the District Judge resolved in favor of the Railroad Company, and found that it "attempted, in good faith, to comply with the statutory requirement to unload the cattle within the statutory period". (R. 22).

The identical situation was presented to the First Circuit Court of Appeals in the case of *United States v. Boston & M. R. R., 84 F. (2d) 365*, a suit by the United States against the Boston & M. R. R. for a penalty for confining sheep in cars longer than permitted by the Cruelty to Animals Act. There too the case was submitted to the District Judge on an agreed statement of fact which omitted an admission of the ultimate fact necessary to liability under the terms of the statute, that is whether or not the confinement of the sheep in the cars more than thirty-six hours was the result of an act knowingly and wilfully done by the carrier. The District Judge found that the facts stipulated "did not establish a wilfull disregard of the statute" and ordered that judgment be rendered for the defendant. Affirming the District Court's judgment, the Court of Appeals said:

> "Although, according to the agreed facts, the defendant knew, or ought to have known, that its conduct might result in violations of the statute, the agreed facts did not include a finding of the ultimate fact essential to the imposition of a penalty,

viz., that the acts complained of were willful violations of the statute. Whether the defendant's conduct was willful or not was for the trial court to determine as an inference of fact from the agreed facts; they being all the evidence in the case from which the conclusion could be drawn.

"* * * * * *

"When the agreed facts contain all the facts essential to a judgment for one party or the other, then an appeal from such a judgment raises the question whether the facts agreed upon were sufficient to support the judgment; and this is so irrespective of whether an exception was taken to the judgment or not, for, in such case, the error, if one exists, appears upon the record proper and no exception is necessary. Sanfeliz v. Bank (C. C. A.) 74 F. (2d) 338, 340. But in this case the facts agreed upon do not contain all the facts essential to a judgment, and a finding of an ultimate fact one way or the other was required for its justification. This being so, an exception to the judgment on the ground that the agreed facts presented only a question of law could avail nothing, as the agreed facts alone do not require a verdict either way. United States v. Smith, supra."

Accordingly, we submit that there is not presented here any question of law for this Honorable Court to review.

However, if there is any question of law presented, then we submit that it is whether, in a suit for a penalty under the Cruelty to Animals Act, the United States can recover the penalty for the knowing and wilful violation of that statute, without some showing that the action of the Railroad Company in confining the animals beyond the

statutory period was knowing and wilful. The opinion of the Fifth Circuit Court of Appeals in effect requires such a showing and disposes of that question correctly and construes the Cruelty to Animals Act as it has been onstrued by the First, Third, Sixth, Seventh, Eighth and Ninth Circuit Courts of Appeal.

The petitioner is contending for a construction of the statute which would emasculate the words "knowingly and wilfully" from Section 3 thereof and would have the Courts enforce the penalty provided by the statute for its knowing and wilful violation, even in those cases where no knowledge or wilfulness is shown. As stated by Judge Hutcheson in the opinion of the Fifth Circuit Court of Appeals:

> "To take appellant's view we should have to disregard the settled meaning of the words 'knowing and wilful' when used in penalty and criminal statutes. To take that view we should have to assume that Congress in section 3 idly used two words of known and settled legal meaning, intending that the section should be read as though they were not in it. To take that view we should have to close our eyes to the obvious distinction which Congress plainly intended and aptly made by the use of the words in question, between the duty to unload unless prevented by causes beyond its control, imposed upon the carrier by section 1, and the liability for penalties imposed upon it by section 3 for knowingly and wilfully failing to perform the imposed duty."

To give to the statute the construction urged by the United States would do violence to the rule of statutory construction that no words appearing in a statute

shall be treated as surplusage and that effect shall be given to every clause and part.

In *Platt v. Union Pacific R. R. Co., 99 U. S. 48, 58,* the Court said:

> "But the admitted rules of statutory construction declare that a legislature is presumed to have used no superfluous words. Courts are to accord a meaning, if possible, to every word in a statute. In Commonwealth v. Alger (7 Cush. (Mass.) 53-89), it was said that in putting a construction upon any statute every part must be regarded, and it must be so expounded, if practicable, as to give some effect to every part of it. So, in People v. Burns (5 Mich. 114), it was held that some meaning, if possible, must be given to every word in a statute, and that where a given construction would make a word redundant, it was reason for rejecting it. To the same effect is Dearborn and Others v. Inhabitants of Brookline (97 Mass. 466); and in Gates v. Salmon (35 Cal. 576) it was ruled that no words are to be treated as surplusage or as repetition."

In *Montclair v. Ramsdell, 107 U. S. 147, 152,* the Court said:

> "It is the duty of the court to give effect, if possible, to every clause and word of a statute, avoiding, if it may be, any construction which implies that the legislature was ignorant of the meaning of the language it employed."

In *Ginsberg & Sons v. Popkin, 285 U. S. 204, 208,* the Court said:

> "General language of a statutory provision, although broad enough to include it, will not be held to apply to a matter specifically dealt with in an-

other part of the same enactment. United States v. Chase, 135 U. S. 255, 260. Specific terms prevail over the general in the same or another statute which otherwise might be controlling. Kepner v. United States, 195 U. S. 100, 125. In re Hassenbusch, 108 Fed. 38. United States v. Peters, 166 Fed. 613, 615. The construction contended for would violate the cardinal rule that, if possible, effect shall be given to every clause and part of a statute. Market Co. v. Hoffman, 101 U. S. 112, 115. Ex parte Public National Bank, 278 U. S. 101, 104."

The principle of law that in statutory construction no words are to be treated as surplusage and that effect shall be given to every clause and part of a statute, is so well settled that further citation of authorities appears unnecessary.

Why should the words "knowingly and wilfully" found in Section 3 of the act, which imposes a penalty for its violation, be disregarded? True, Section 1 of the Act declares a rail carrier shall in no event keep cattle confined in a car beyond thirty-six hours without unloading them for rest, water and feeding, unless prevented by storm or other accidental or unavoidable causes which cannot be anticipated or avoided by the exercise of due diligence and foresight, but Congress has not seen fit to penalize a carrier who does so, unless the carrier violates the statute knowingly and wilfully. It is not for the United States attorneys or for the courts to say that the inclusion by Congress of the provision that the act must be knowingly and wilfully committed before the penalty can be inflicted is just or unjust or proper or improper.

In *Rice v. The Minnesota & North Western Railroad Co., 1 Black 360, 379*, the Court said:

> "Whether the provision be just or unjust, the words mentioned are a part of the act, and it is not competent for this court to reject or disregard a material part of an act of Congress, unless it be so clearly repugnant to the residue of the act that the whole cannot stand together."

Inclusion of the words "knowingly and wilfully" in Section 3 of the Act does not make that Section repugnant to the provisions of Section 1. By Section 1 of the Act, Congress announced a standard of conduct for carriers in the transportation of cattle and provided that rail carriers should be required to unload cattle for a period of five consecutive hours for rest, water and feeding, unless prevented by storm or other accidental or unavoidable causes which the carrier could not anticipate or avoid by the exercise of due diligence and foresight. Any carrier who accidentally or negligently fails to measure up to this standard of conduct thereby renders itself liable in a civil suit for damages to any shipper or consignee who has been damaged by its negligence, but does not render itself liable for the penalty prescribed by Section 3 of the Act, unless the violation has been knowing and wilful.

On page six of the petition, the petitioner alleges that the decision of the Fifth Circuit Court of Appeals is squarely in conflict with the decisions of the Circuit Court of Appeals for the Fourth Circuit in the case of *United States v. Atlantic Coast Line Railroad, 173 Fed. 764*, and the Circuit Court of Appeals for the Ninth Circuit in the cases of *Montana Cent. Ry. Company v. United States, 164 Fed. 400,*

and *Oregon-Washington R. & Nav. Co. v. United States, 205 Fed. 337*, and that the decision appears to be in conflict with that of the Circuit Court of Appeals for the Eighth Circuit in *United States v. Union Pac. R. Co., 169 Fed. 65 (C. C. A. 8th)*.

We take issue with the petitioner on this assertion.

In the case of *United States v. Union Pac. R. Co.*, the defendant pled that unusual press of business required the Railroad Company to confine the animals in the car beyond the statutory period, and that its action was not knowing and wilful within the meaning of the statute. The United States challenged the sufficiency of this answer as a defense by a demurrer, which was sustained by the District Court. The Eighth Circuit Court of Appeals reversed the decision of the District Court and ordered the demurrer overruled, thereby holding in effect that press of business was not a sufficient defense as a matter of law. Nevertheless, the organ of the Court, Judge Adams, recognized specifically "that Section 1 creates a duty to be performed by carriers and that *Section 3 imposes a penalty not for the failure to perform the duty, but only when the carrier 'knowingly and wilfully' fails in that regard.*" (Italics ours).

This was recognized and stressed by Mr. Justice Van Devanter when he sat as Circuit Judge in the Eighth Circuit Court of Appeals, in a later case in that Circuit involving the construction of the Cruelty to Animals Act, *St. Louis & S. F. R. Co. v. United States, 169 Fed. 69*, in which he said as organ of the Court:

> "It will be assumed, but without so deciding, that the statute is directed not merely against the continuous

> confinement of cattle in cars beyond the prescribed period of 28 or 36 hours, as the case may be, without rest, water, or food, but also against unloading them for rest, water, and feeding into pens not properly equipped therefor, that the pen into which these cattle were unloaded was not properly equipped in the sense of the statute, and that ordinarily to unload cattle into such a pen for rest, water, and feeding is to fail to comply with the statute; and, with these matters so disposed of, *we will consider only whether there was any substantial evidence from which the jury reasonably could have found that the defendant knowingly and wilfully failed to comply with the statute in this instance.* We say 'knowingly and wilfully' because, as was recently said by Judge Adams in speaking for this Court, 'it appears that section 1 creates a duty to be performed by carriers, and that section 3 imposes a penalty not for the failure to perform the duty, but only when the carrier "knowingly and willfully" fails in that regard.' United States v. Union Pacific R. R. Co. (C. C. A.) 169 Fed. 65. *The qualifying words cannot be disregarded. They mean something, and whatever that may be is an essential element of every right to the penalty.*" (Italics ours).

We, therefore, submit that there was nothing in the earlier case in the Eighth Circuit of *United States v. Union Pacific R. Co.* that was in any way in conflict with the decision of the Fifth Circuit Court of Appeals in this case, and that the later case in the Eighth Circuit, *St. Louis & S. F. R. Co. v. United States*, supports the decision of the Fifth Circuit Court of Appeals in this case.

Passing now to the Ninth Circuit, it is a fact that the earlier case of *Montana Central Ry. Co. v. United States, 164 Fed. 400*, does support the interpretation of the

statute for which the United States is contending. However, that decision was overruled by the later case in the same Circuit of *Oregon-Washington R. & Nav. Co. v. United States, 205 Fed. 337*, which not only is not in conflict with the decision of the Fifth Circuit Court of Appeals, as alleged by the petitioner, but actually supports the decision of the Fifth Circuit Court of Appeals. We quote the pertinent language from the *Oregon-Washington R. & Nav. Co. v. United States*, on which we rely:

> "The carrier who knowingly and willfully fails to comply with the provisions of the act is amenable thereto, *and in the present case it was incumbent upon the government to show by testimony sufficient to go to the jury that the defendant did so knowingly and willfully* fail to unload the hogs within the period of 36 hours. *The words 'knowingly and willfully,' as employed in the act, have been many times construed and their meaning determined. 'Knowingly' signifies 'with a knowledge of the facts which, taken together, constitute the failure to comply with the statute'; and 'willfully' means 'purposely or obstinately, and is designed to describe the attitude of a carrier who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements'.* Such is the interpretation given by Mr. Justice Van DeVanter while a member of the Circuit Court of Appeals of the Eighth Circuit. St. Louis & S. F. R. Co. v. United States, 169 Fed. 69, 71, 94 C. C. A. 437, 439." (Italics ours).

Accordingly, we submit that it is only in the jurisprudence of the Fourth Circuit that the interpretation of the statute sought by the United States finds any support, and then only in the early case of *United States v. Atlantic Coast Line R. Co., 173 Fed. 764*, which is wholly inconsist-

ent with the later jurisprudence in the other circuits construing the same statute.

In a note at the bottom of page eight of the petition, the petitioner observes that a number of decisions cited by the Circuit Court of Appeals for the Fifth Circuit do not support its conclusion, and comments on the cases of *Oregon-Washington Railroad & Nav. Co. v. United States*, (9th C. C. A.), 205 Fed. 337; *Chicago, B. and Q. R. R. v. United States*, (8th C. C. A.), 194 Fed. 342; *St. Joseph Stockyards Co. v. United States*, (8th C. C. A. 1911), 187 Fed. 104; *United States v. Boston & M. R. R. Co.*, (1st C. C. A.), 84 F. (2d) 365; *St. Louis & S. F. R. Co. v. United States*, (8th C. C. A.), 169 Fed. 69; and *St Louis Merchants Bridge Terminal Ry. Co. v. United States*, (7th C. C. A.), 209 Fed. 600. We submit that every one of these decisions supports that of the Fifth Circuit Court of Appeals in this case.

The quotation, *supra*, from *Oregon-Washington Railroad & Nav. Co. v. United States* demonstrates plainly that this decision amply supports that of the Fifth Circuit Court of Appeals in this case. Furthermore the facts involved in that case are not substantially the same as in the instant case, as asserted by the petitioner. In the *Oregon-Washington Railroad & Nav. Co. v. United States* case, the Railroad Company did not make any endeavor to have the cattle unloaded, but relied on the statement of the shipper's caretaker who accompanied the cattle that he would see that this was done, thereby attempting to delegate its duty to the shipper, and that case having been submitted to the jury there resulted a verdict in favor of the United

States. In the last analysis, the case simply stands for the proposition that the question of knowledge and wilfulness it to be determined by a jury from the evidence. The fact that the jury in that case found in favor of the United States on the facts involved, does not result in the case being contrary to the one here under consideration, where the facts are different and where the Railroad Company did not undertake to delegate its duty of unloading to the shipper.

True, in *Chicago, B. and Q. R. R. v. United States, 194 Fed. 342*, the Court found that there was no evidence of negligence, but the case is in point and supports the decision of the Fifth Circuit Court of Appeals in this case, in that it holds that the violation of the Cruelty to Animals Act must be knowing and wilful before the penalty prescribed by that act for its violation can be collected. Defining "wilful" the Court said:

> "'Wilfully' means 'purposely or obstinately, and is designed to describe the attitude of a carrier, who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements'. St. Louis & S. F. Ry Co. v. United States, 169 Fed. 69, 71, 94 C. C. A. 437. There is no proof of any such attitude on the part of this carrier".

*St. Joseph Stockyards Co. v. United States (8th C. C. A.), 187 Fed. 104*, also amply supports the decision of the Fifth Circuit Court of Appeals. We quote from *St. Joseph Stockyards Co. v. United States* case, as follows:

> "This court has often had occasion to consider the 28-hour law, and from its previous decisions these conclusions may be safely drawn. Section 1 of this statute imposes upon every railroad

company carrying cattle from one state to another the duty to unload them for rest, water, and feeding once in 28 hours, in the absence of a request for an extension of this time to 36 hours; *and section 3 of the act imposes penalties for which these judgments were rendered, not for a failure to discharge the duty prescribed by section 1, but for 'knowingly and willfully' failing to discharge it.* United States v. Union Pacific R. Co., 94 C. C. A. 433, 434, 169 Fed. 65, 66.

"The words 'knowingly and willfully' in this statute have significance, and in the enforcement of it they must have effect. 'Knowingly' evidently means with a knowledge of the facts which, taken together, constitute the failure to comply with the statute, as is the case where one carrier receives from another a car loaded with cattle, and, with knowledge of how long they then had been confined in the car without rest, water, or food, prolongs the confinement until the statutory limit is exceeded. * * * *'Willfully' means purposely or obstinately, and is designed to describe the attitude of a carrier, who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements.'* St. Louis & S. F. R. Co. v. United, 94 C. C. A. 437, 439, 169 Fed. 69, 71; United States v. Sioux City Stockyards Co. (C. C.) 162 Fed. 556, 560, 562; United States v. Stockyards Terminal Co. (C. C.) 172 Fed. 452; New York Central & H. R. R. Co. v. United States, 165 Fed. 833, 841, 91 C. C. A. 519, 527." (Italics ours).

True, *United States v. Boston & M. R. R. Co., 84 F. (2d) 365*, was decided on a procedural question, and we have cited it above in support of the very same procedural question, which we have raised in this case. Nevertheless, the inference to be drawn from the case is that before the penalty prescribed by the Cruelty to Animals Act for its

violation can be enforced, there must be evidence from which the Court or the jury can infer knowledge and wilfulness. Likewise, the decision in *St. Louis & S. F. R. Co. v. United States, 169 Fed. 69*, amply supports the decision of the Fifth Circuit Court of Appeals. We quote from the *St. Louis & S. F. R. Co. v. United States* case, as follows:

> "It will be assumed, but without so deciding, that the statute is directed not merely against the continuous confinement of cattle in cars beyond the prescribed period of 28 or 36 hours, as the case may be, without rest, water, or food, but also against unloading them for rest, water, and feeding into pens not properly equipped therefor, that the pen into which these cattle were unloaded was not properly equipped in the sense of the statute, and that ordinarily to unload cattle into such a pen for rest, water, and feeding is to fail to comply with the statute; and, with these matters so disposed of, we will consider only whether there was any substantial evidence from which the jury reasonably could have found that the defendant knowingly and willfully failed to comply with the statute in this instance. We say 'knowingly and wilfully' because, as was recently said by Judge Adams in speaking for this court, 'it appears that section 1 creates a duty to be performed by carriers, and that section 3 imposes a penalty not for the failure to perform the duty, but only when the carrier "knowingly and willfully" fails in that regard'. United States v. Union Pacific R. R. Co. (C. C. A.) 169 Fed. 65. The qualifying words cannot be disregarded. They mean something, and whatever that may be is an essential element of every right to the penalty. 'Knowingly' evidently means with a knowledge of the facts which taken together constitute the failure to comply with the statute, as is the case where one carrier receives from another a car loaded with cattle, and,

with knowledge of how long they then had been confined in the car without rest, water, or food, prolongs the confinement until the statutory limit is exceeded. 'Willfully' means something not expressed by 'knowingly', else both would not be used conjunctively. And presumptively it means something not expressed by 'willingly', else the change from that word would not have been made when the old statute (Rev. St. Sections 4386-4390 (U. S. Comp. St. 1901, pp. 2995-2997)) was being re-enacted. Crawford v. Burke, 195 U. S. 176, 190, 25 Sup. Ct. 9, 49 L. Ed. 147; Hopper v. Denver, etc., Co., 84 C. C. A. 21, 24, 155 Fed. 273, 276. But it does not mean with intent to injure the cattle or to inflict loss upon their owner because such intent on the part of a carrier is hardly within the pale of actual experience or reasonable supposition. United States v. Union Pacific R. R. Co., supra. So, giving effect to these considerations, we are persuaded that it means purposely or obstinately and is designed to describe the attitude of a carrier, who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements."

*St. Louis Merchants Bridge Terminal Ry. Co. v. United States, (7th C. C. A.), 209 Fed. 600,* also clearly supports the decision of the Fifth Circuit Court of Appeals. We quote from the *Merchants Bridge Terminal Ry. Co.* case, as follows:

"The declaration charges, as the statute requires, that plaintiff in error 'knowingly and willfully confined' said stock in said cars for a longer period than that permitted by the statute. As was said by the United States Circuit Court of Appeals for the Eighth Circuit in C. B. & Q. Ry. Co. v. United States, 194 Fed. 342, 114 C. C. A. 334:

" 'Wilfully' means purposely or obstinately, and is designed to describe the attitude of a carrier

> who, having a free will or choice, either intentionally disregards the statute or is plainly indifferent to its requirements."

We submit that the weight of the well settled jurisprudence in the First, Third, Sixth, Seventh, Eighth and Ninth Circuit Courts of Appeal is to the effect that in a suit by the United States for a penalty for violating the Cruelty to Animals Act, it is incumbent upon the United States to make some showing of knowledge and wilfulness, and cite in support thereof the following cases:

First Circuit.

*United States v. Boston & M. R. R., (C. C. A. 1936), 84 F. (2d) 365.*

Third Circuit.

*United States v. Lehigh Valley R. Co., (C. C. A. 1913), 204 Fed. 705;*

*United States v. Philadelphia & R. Ry. Co., (D. C. E. D. Pa. 1915), 223 Fed. 214.*

Sixth Circuit.

*United States v. Southern Ry. Co., (D. C. E. D. Tenn. N. D. 1923), 1 F. (2d) 607.*

Seventh Circuit.

*St. Louis Merchants' Bridge Terminal Ry. Co. v. United States, (C. C. A. 1913), 209 Fed. 600.*

Eighth Circuit.

*United States v. Union Pacific Ry. Co., (C. C. A. 1909), 169 Fed. 65;*

*St. Louis & S. F. R. Co. v. United States, (C. C. A. 1909), 169 Fed. 69;*

*United States v. Stockyards Terminal Ry. Co. (C. C. A. 1910), 178 Fed. 19;*

*St. Joseph Stockyards Co. v. United States, (C. C. A. 1911), 187 Fed. 104;* and

*United States v. Sioux City Stock Yards Co., (C. C. N. D. Iowa W. D. 1908), 162 Fed. 556.*

Ninth Circuit.

*Oregon-Washington R. & Nav. Co. v. U. S. (C. C. A. 1913), 205 Fed. 337.*

We further submit that, as Judge Hutcheson has said in his opinion, *90 F. (2d) 213, 215*, "the word 'wilfully' when used in statutes of this kind, has the well-defined meaning of deliberate and conscious purpose. It gives effect to the view that statutes in which it is found subject to penalty or punishment only those who deliberately and consciously, that is, with set purpose, do what they are forbidden by the statutes to do. Under that view such statutes do not subject to penalties those who, though they violate them, do so unintentionally through oversight, or simple negligence".

Accordingly, we submit that if there is any question of law involved here, the decision of the United States Circuit Court of Appeals for the Fifth Circuit in this case disposes of it correctly and in uniformity with the well settled jurisprudence of the Circuit Courts of Appeal, and that this case is not of such a character as to justify this Court

in granting a writ of certiorari to review the decision of the United States Circuit Court of Appeals for the Fifth Circuit.

Respectfully submitted,

ARTHUR A. MORENO,
SELIM B. LEMLE,
Attorneys for Illinois Central Railroad Company.

E. C. CRAIG,
CHARLES N. BURCH,
H. D. MINOR,
CLINTON H. McKAY,
Of Counsel.

New Orleans, Louisiana,
September 15th, 1937.